

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

BILLIE E. BALLENGER,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-cv-00705

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

REMAND ORDER

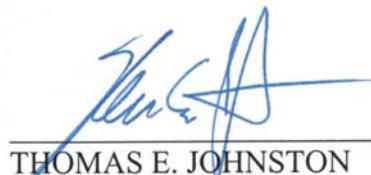
By Standing Order entered on August 1, 2006, and filed in this case on November 6, 2007, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (PF&R). Magistrate Judge VanDervort filed his PF&R on January 31, 2008 [Docket 9]. In that filing, the magistrate judge recommended that this Court grant Defendant's Motion to Remand [Docket 8], remand Plaintiff's case to the Commissioner pursuant to the sixth sentence of 42 U.S.C. § 405(g) for further proceedings as outlined in the unopposed motion, and direct the Clerk of the Court to close the case statistically noting that this case is to be reopened statistically when Defendant files an answer or other pleading responsive to Plaintiff's complaint along with a transcript of the administrative proceedings.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and Plaintiff's right to appeal this

Court's Remand Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due by February 15, 2008, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Having reviewed the PF&R filed by Magistrate Judge VanDervort, the Court **ADOPTS** the recommendations contained therein. Accordingly, the Court hereby **GRANTS** Defendant's Motion to Remand [Docket 8], **REMANDS** Plaintiff's case to the Commissioner pursuant to the sixth sentence of 42 U.S.C. § 405(g) for further proceedings as outlined in the unopposed motion,* and **DIRECTS** the Clerk of the Court to close the case statistically subject to reopening statistically when Defendant files an answer or other pleading responsive to Plaintiff's complaint along with a transcript of the administrative proceedings. Further, the Court **DIRECTS** the Clerk to send a copy of this Remand Order to counsel of record, any unrepresented party, and Magistrate Judge VanDervort.

ENTER: February 25, 2008



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE

* Although the Court remands this case, it retains subject matter jurisdiction over the case because the Court is ordering a "sentence six remand." See *Travis v. Astrue*, 477 F.3d 1037, 1039-40 (8th Cir. 2007) (citing *Shalala v. Schaefer*, 509 U.S. 292, 296-301 (1993)).